IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 40 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

No.1 to 5 No.

JAYANTIBHAI S PATEL

Versus

PRAVINKUMAR P PATEL

Appearance:

MR AB MUNSHI FOR MR AJ PATEL for Petitioners

NOTICE SERVED for Respondent No. 1

MR SJ DAVE, APP for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/06/2000

ORAL JUDGEMENT

The petitioners, original accused of Criminal Case No.952/89 have filed this petition against the order dated 16-12-91, passed by the learned Judicial Magistrate

First Class, Bhachau, below Exh.36 in Criminal Case No.952 of 1989, whereby the learned J.M.F.C. has held that sanction under Section 197 of the Code of Criminal Procedure for filing complaint against the petitioner by the respondent No.1-original complainant is not necessary.

2. Petitioner No.1, who is a Range Forest Officer and he was posted at Bhachau, Kutch, at the relevant time and petitioner is Assistant Conservator of Forest, East Division, Kutch, and on 7-12-89 as a part of their duties, they intercepted truck No.G.Q.D. 4619 belonging to the respondent No.1-original complainant, on the ground that the truck was carrying charcoal which is a forest produce under the provisions of Indian Forest Act and on examination of the documents on record, it was found that respondent No.1 was carrying the goods in question under a transit pass which was bogus one, and therefore, necessary formalities were completed by them and after completing the same the truck and goods were seized and taken into custody. Thereafter, the petitioners started further investigation into the matter and when the investigation was going on, respondent No.1 filed Criminal Case No.952/89 directly before the learned Judicial Magistrate First Class, Bhachau, impleading the petitioners as accused alleging that the petitioners have committed an offence under Section 62 of the Indian Forests Act and offence under Section 465, 471, 341, and 114 of the Indian Penal Code and in view of the same, the learned J.M.F.C., Bhachau, issued process under the provisions of the aforesaid sections. On receiving the same, the petitioners appeared through their learned advocate and submitted an application Exh.36 through the learned Public Prosecutor praying dismissal of the complaint on various grounds including the ground that the sanction under Section 197 of the Code of Criminal Procedure for filing complaint against the petitioner was required because the petitioners are the Government servants and were discharging their duties as Public Servants, and therefore, no complaint against them can be entertained, unless sanction under Section 197 of Code of Criminal Procedure for the purpose of filing complaint is obtained. The petitioners further averred in their application Exh.36 that whatever act done by the petitioners was done during the course of their employment as Government employees as they were discharging their duties as Government servants.

2. After hearing learned counsel appearing for the respective parties, learned J.M.F.C., Bhachau, rejected application Exh.36 on 16-12-91, against which the present

Criminal Revision Application has been filed by the petitioners-original accused.

3. Heard Mr. A.B. Munshi for Mr.A.J.Patel for the petitioners and Mr.S.J.Dave, learned A.P.P. for the respondent No.2-State. None appeared on behalf of the respondent No.1 though served. I have gone through the reasoned order passed by the learned J.M.F.C., Bhachau. Learned counsel for the petitioner has drawn my attention to a decision reported in A.I.R. 1998 SC 1524 and argued that the ratio laid down in the said judgment is applicable to the facts of instant case. In the said judgment it is held that :

> "Section 197 (1)- Sanction for prosecution- Issuance of process by Magistrate for appearance of accused on being satisfied that there is sufficient ground for proceeding- Plea by accused before Magistrate that offence was committed by him in discharge of official duty and that Court had no power to take cognizance in absence of previous sanction- Accused can produce relevant material to establish necessary ingredients for invoking S. 197 (1).

4. It is not in dispute that petitioners are Government servants. It is also not in dispute that at the relevant time, petitioner No.1 was serving as Range Forest Officer and he was posted at Bhachau and petitioner No.2 was serving as Assistant Conservator of Forest, East Division, Kutch. It is also not in dispute that during the course of their duties, on 17-12-89, the petitioners intercepted truck bearing registration No.G.Q.D. 4619 belonging to respondent No.1 and same was seized along with goods-charcoal after following all legal formalities. So, whatever role has been played by the petitioners, it is played by them as Government servants and while discharging their duties as Public Servants and for that learned J.M.F.C. at page 4 of his order has held that the petitioners intercepted the truck bearing registration No.G.Q.D. 4619 and seized the same along with goods-charcoal and the petitioners done the said act during the course their employment and discharging their duties as a public servant and the said act of petitioners is legal and proper. It is pertinent to note that the learned J.M.F.C. on one hand come to the conclusion that the act done by the petitioners is during their course of employment and while discharging their duties as a Government servant and on the other hand, the learned J.M.F.C. has rejected the application Exh.36, for which interference of this Court is must in

view of the judgment reported in A.I.R. 1998 SC 1524 (supra) as the order passed by the learned J.M.F.C. is not legal and proper as the petitioners at the relevant time discharging their duties as a Government servant and they followed all the legal formalities before intercepting the truck No.G.Q.D. 4619 and taking the same into custody along with the goods-charcoal. Therefore, if at all the respondent No.1 wanted to file a complaint against the petitioners, then sanction under Section 197 of the Code of Criminal Procedure is must and without such sanction, no complaint can be filed against the petitioners. In the instant case, no sanction under Section 197 of Code of Criminal Procedure for filing complaint against the petitioners is obtained, and therefore, in absence of such sanction, Criminal Case No.952 of 1989 is required to be quashed and the petitioners are required to be discharged from the case.

5. For the foregoing discussion, this petition is allowed. The judgment and order dated 16-12-91, passed by the learned Judicial Magistrate First Class, Bhachau, below Exh.36 in Criminal Case No. 952 of 1989 is hereby quashed and set aside and the petitioners are discharged from the offence. Rule made absolute.

16-12-2000 (R.P.Dholakia, J.)

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